

Applicant : Donald P. Gravel et al.  
Appln. No. : 09/827,642  
Page : 4

### REMARKS

Claims 1-12, 14-24 and 26-42 are pending in the present application. Reconsideration is respectfully requested for the following reasons.

In the Office Action, the Examiner has indicated that claims 7-10 and 19-22 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicants would like to thank the Examiner for that notification. Applicants note that claims 9 and 21 have been amended for clarity.

*cancelle  
tack bd.  
from claims*

The drawings have been objected to under 37 C.F.R. §1.83(a) for not showing every feature of the invention specified in the claims. According to the Office Action, the tack board as claimed in claims 13 and 25 must be shown or the feature cancelled from the claims. Claims 13 and 25 depend from claims 1 and 14, respectively. Claims 1 and 14 introduce a cover member that could have a tack board, any other type of board or no board. Therefore, a cover member including a tack board is covered by claims 1 and 14. Consequently, the objection to the drawing is believed to be obviated.

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Claim 16 has been rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. According to the Office Action, the terms "said U-shaped groove" and "said horizontal flange" lack antecedent basis in claim 16. Claim 16 has been amended to depend from claim 15, thereby providing antecedent basis for all of the terms in claim 16. Accordingly, claim 16 is believed to be definite. If the Examiner has any questions, the Examiner is requested to call the undersigned at the number below.

Claims 1-4 and 11 have been rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,130,972 to Varlonga. In proceedings before the Patent and Trademark Office, the Examiner bears the burden of establishing a prima facie case of anticipation based upon the prior art. *In re Sun*, 31 USPQ 2d 1451, 1453 (Fed. Cir. 1993) (unpublished). Applicants respectfully assert that the Examiner has not yet met her burden of establishing a prima facie case of anticipation with respect to the rejected claims.

Claim 1 defines a partition for open building space including, among other things, a frame including at least one substantially horizontal surface, a cover member being configured

Applicant : Donald P. Gravel et al.  
Appln. No. : 09/827,642  
Page : 5

to enclose at least a portion of the frame, the cover member including attachment members configured to connect the cover member to the frame and a seal attached to the cover member and including a resilient flap which engages the substantially horizontal surface of the frame to inhibit the passage of acoustical energy through the partition.

The prior art of record does not disclose or suggest the above noted features of claim 1. First, the Varlonga '972 patent does not disclose a seal attached to a cover member. The Varlonga '972 patent does not expressly disclose that the insulating strips 18 are connected to the side edges 6a and 7a. Furthermore, the Varlonga '972 patent does not inherently disclose that the insulating strips 18 are connected to the side edges 6a and 7a. "The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic." M.P.E.P. § 2112; *In re Rijchaert*, 28 U.S.P.Q.2d 1955, 1957 (Fed. Cir. 1993). "In relying upon the theory of inherency, the Examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. and Inter. 1990) (emphasis original). Accordingly, the Varlonga '972 patent does not disclose a seal attached to a cover member. Second, the Varlonga '972 patent does not disclose a seal attached to a cover member that includes a resilient flap engaging a substantially horizontal surface of a frame. As disclosed in the Varlonga '972 patent, the plates 13 and 14 are vertical. Therefore, the insulating strips 18 do not engage a horizontal surface of any frame. Accordingly, claim 1 is not anticipated by the Varlonga '972 patent.

Claims 2-4 and 11 depend from claim 1, and since claim 1 is not anticipated by the Varlonga '972 patent as set forth above, claims 2-4 and 11 are not anticipated by the Varlonga '972 patent. Furthermore, in regard to claim 2, the Varlonga '972 patent does not disclose a cover member including a substantially horizontal flange or a seal that includes a U-shaped groove, with the U-shaped groove configured to accept the substantially horizontal flange of the cover member to frictionally connect the cover member to the seal. The Varlonga '972 patent does not disclose a seal connected to a substantially horizontal flange. Even if the insulating strips 18 were connected to the side edges 6a, 7a, 6'a or 7'a, the side edges 6a, 7a,

Applicant : Donald P. Gravel et al.  
Appln. No. : 09/827,642  
Page : 6

6'a and 7'a are not horizontal. Furthermore, as discussed above, since the Varlonga '972 patent does not expressly or inherently disclose a seal attached to a cover member, the Varlonga '972 patent does not expressly or inherently disclose a seal including a U-shaped groove configured to accept a substantially horizontal flange of a cover member to frictionally connect a seal to the cover member. Moreover, in regard to claim 4, the Varlonga '972 patent does not disclose or suggest that the at least one substantially horizontal surface of the frame comprises a first substantially horizontal surface and a second substantially horizontal surface, with the seal engaging the first substantially horizontal surface, and further including a second seal attached to the cover member, with the second seal including a resilient flap configured to engage the second substantially horizontal surface of the frame. The lower stringer 4 as disclosed in the Varlonga '972 patent is not expressly or inherently disclosed as being attached to the panel 2. Accordingly, claims 2-4 and 11 are in condition for allowance.

Claims 1, 5, 6, 15 and 17 have been rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,023,899 to Mecozzi. In proceedings before the Patent and Trademark Office, the Examiner bears the burden of establishing a prima facie case of anticipation based upon the prior art. *In re Sun*, 31 USPQ 2d 1451, 1453 (Fed. Cir. 1993) (unpublished). Applicants respectfully assert that the Examiner has not yet met her burden of establishing a prima facie case of anticipation with respect to the rejected claims.

As stated above, claim 1 defines a partition for open building space including, among other things, a frame including at least one substantially horizontal surface, with the cover member including attachment members configured to connect the cover member to the frame, and a seal attached to the cover member, the seal including a resilient flap which engages the substantially horizontal surface of the frame. The prior art of record does not disclose or suggest the above noted features of claim 1. Specifically, the Mecuzzi '899 patent does not expressly or inherently disclose that the seal 96 is attached to the panel 12. Furthermore, the Mecuzzi '899 patent does not disclose that the seal 96 includes a resilient flap that engages a substantially horizontal surface of the panel 12. Notably, the second straight portion 54 of the panel 12 is vertical. Accordingly, claim 1 is in condition for allowance.

Applicant : Donald P. Gravel et al.  
Appln. No. : 09/827,642  
Page : 7

Claims 5 and 6 depend from claim 1, and since claim 1 defines unobvious patentable subject matter, claims 5 and 6 define unobvious patentable subject matter. Furthermore, in regard to claim 5, the prior art of record does not disclose or suggest a frame that includes a substantially horizontally extending cross-member having a plurality of windows and attachment members that are inserted into the windows for attaching a cover member to the frame. The Mecozzi '899 patent does not expressly or inherently disclose that the bracket 92 has a plurality of windows. The bracket 92 is only disclosed as having one opening. Moreover, in regard to claim 6, the prior art of record does not disclose or suggest that at least one substantially horizontal surface is located on a lower portion of the cross-member. The Mecozzi '899 patent does not disclose a horizontal surface or a horizontal surface on a lower portion of a cross-member. Accordingly, claims 5 and 6 are in condition for allowance.

Claims 15 and 17 depend from claim 14. Since claim 14 is not anticipated by the Mecozzi '899 patent, claims 15 and 17 cannot be anticipated by the Mecozzi '899 patent. Accordingly, claims 15 and 17 are in condition for allowance.

Claims 14, 16, 18 and 23 have been rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,087,944 to Mecklenburg. In proceedings before the Patent and Trademark Office, the Examiner bears the burden of establishing a prima facie case of anticipation based upon the prior art. *In re Sun*, 31 USPQ 2d 1451, 1453 (Fed. Cir. 1993) (unpublished). Applicants respectfully assert that the Examiner has not yet met her burden of establishing a prima facie case of anticipation with respect to the rejected claims.

Claim 14 defines a cover panel for a partition having a frame with a horizontal surface including, among other things, a cover member being configured to enclose at least a portion of the frame, with the cover member including attachment members configured to connect the cover member to the frame, and a seal attached to the cover member, with the seal including a resilient flap configured to engage the horizontal surface of the frame when the cover member is connected to the frame. The prior art of record does not suggest the above noted features of claim 14. Specifically, the Mecklenburg '944 patent does not disclose a seal attached to a cover member. The Mecklenburg '944 reference does not disclose that the ceiling strip 11 is

Applicant : Donald P. Gravel et al.  
Appln. No. : 09/827,642  
Page : 8

connected to the wall or panel element 5. See lines 47-58 of column 6. Accordingly, claim 14 is in condition for allowance.

Claims 16, 18 and 23 depend from claim 14, and since claim 14 defines unobvious patentable subject matter, claims 16, 18 and 23 define patentable subject matter. Moreover, in regard to claim 23, the Mecklenburg '944 patent does not expressly or inherently disclose that the panel 5 is made of steel. Accordingly, claims 14, 16, 18 and 23 are in condition for allowance.

Claim 12 has been rejected under 35 U.S.C. §103(a) as being unpatentable over the Mecozzi '899 patent in view of U.S. Patent No. 4,028,855 to Prewer. Claim 12 depends from claim 1. As discussed above, claim 1 defines unobvious patentable subject matter. Accordingly, since claim 12 depends from claim 1, claim 12 defines unobvious patentable subject matter. Accordingly, claim 12 is in condition for allowance.

Claim 24 has been rejected under 35 U.S.C. §103(a) as being unpatentable over the Mecklenburg '944 patent in view of the Prewer '855 patent. Claim 24 depends from claim 14. As discussed above, claim 14 defines unobvious patentable subject matter. Accordingly, since claim 24 depends from claim 14, claim 24 defines unobvious patentable subject matter. Accordingly, claim 24 is in condition for allowance.

New claims 37-41 depend from claims 1 or 14. As discussed above, claims 1 and 14 define unobvious patentable subject matter, and since claims 37-41 depend from claims 1 or 14, claims 37-41 define unobvious patentable subject matter.

All pending claims are believed to be in condition for allowance, and a Notice of Allowability is therefore earnestly solicited.

Applicant : Donald P. Gravel et al.  
Appln. No. : 09/827,642  
Page : 9

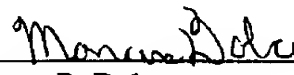
Attached hereto is a marked-up version of the changes made to the specification and claims by the current amendment. The attached page is captioned "Version With Markings to Show Changes Made."

Respectfully submitted,

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Applicant : Donald P. Gravel et al.  
Appln. No. : 09/827,642  
Page : 10

VERSION WITH MARKINGS TO SHOW CHANGES MADE

In the Claims:

Claims 5, 9, 16 and 21 have been amended as follows.

5. (Amended) The partition as set forth in claim 1, wherein:

said frame further includes a substantially [horizontal] horizontally extending cross-member having a plurality of windows; and

said attachment members are inserted into said windows for attaching said cover member to said frame.

9. (Amended) The partition as set forth in claim 8, wherein:

said at least one of said spring clips includes a connecting flange that extends above an upper edge of said cover member, wherein a tool can be inserted in a space located between said upper edge of said cover member and an outwardly protruding member of said frame located above said cover member so as to engage said connecting flange of said at least one of said spring clips and depress said connecting flange so as to disengage said tab of said at least one of said spring clips from said inside surface of said cross-member to disengage said at least one of said spring clips from its associated window.

16. (Amended) The cover panel as set forth in claim [14] 15, wherein:

said seal includes at least one finger extending into said U-shaped groove, said at least one finger configured to frictionally engage said horizontal flange of said cover member.

21. (Amended) The cover panel as set forth in claim 20, wherein:

said spring clips include a connecting flange that extends above an upper edge of said cover member, wherein a tool can be inserted in a space located between said upper edge of said cover member and an outwardly protruding member of the frame located above said cover member so as to engage said connecting flange of said spring clip and depress said connecting

Applicant : Donald P. Gravel et al.  
Appln. No. : 09/827,642  
Page : 11

flange so as to disengage said tab of said attachment members from the inside surface of the cross-member to disengage said spring clip from its associated window.